

YOUNG CONAWAY STARGATT & TAYLOR, LLP

BEN T. CASTLE  
SHELDON N. SANDLER  
RICHARD A. LEVINE  
RICHARD A. ZAPPA  
FREDERICK W. IOBST  
RICHARD H. MORSE  
DAVID C. MCBRIDE  
JOSEPH M. NICHOLSON  
CRAIG A. KARSNITZ  
BARRY M. WILLOUGHBY  
JOSY W. INGERSOLL  
ANTHONY G. FLYNN  
JEROME K. GROSSMAN  
EUGENE A. DIPRINZIO  
JAMES L. PATTON, JR.  
ROBERT L. THOMAS  
WILLIAM D. JOHNSTON  
TIMOTHY J. SNYDER  
BRUCE L. SILVERSTEIN  
WILLIAM W. BOWSER  
LARRY J. TARABICOS  
RICHARD A. DILIBERTO, JR.  
MELANIE K. SHARP  
CASSANDRA F. ROBERTS  
RICHARD J. A. POPPER  
TERESA A. CHEEK  
NEILLI MULLEN WALSH

JANET Z. CHARLTON  
ROBERT S. BRADY  
JOEL A. WAITE  
BRENT C. SHAFFER  
DANIEL P. JOHNSON  
CRAIG D. GREAR  
TIMOTHY JAY HOUSEAL  
MARTIN S. LESSNER  
PAULINE K. MORGAN  
C. BARR FLINN  
NATALIE WOLF  
LISA B. GOODMAN  
JOHN W. SHAW  
JAMES P. HUGHES, JR.  
EDWIN J. HARRON  
MICHAEL R. NESTOR  
MAUREEN D. LUKE  
ROLIN P. BISSELL  
SCOTT A. HOLT  
JOHN T. DORSEY  
M. BLAKE CLEARY  
CHRISTIAN DOUGLAS WRIGHT  
DANIELLE GIBBS  
JOHN J. PASCHETTO  
NORMAN M. POWELL  
ELENA C. NORMAN

THE BRANDYWINE BUILDING  
1000 WEST STREET, 17TH FLOOR  
WILMINGTON, DELAWARE 19801

P.O. Box 391  
WILMINGTON, DELAWARE 19899-0391

(302) 571-6600  
(800) 253-2234 (DE ONLY)  
FAX: (302) 571-1253

110 WEST PINE STREET  
P.O. Box 594  
GEORGETOWN, DELAWARE 19947  
(302) 856-3571  
(800) 255-2234 (DE ONLY)  
FAX: (302) 856-9338

WWW.YOUNGCONAWAY.COM

DIRECT DIAL: (302) 576-3587  
DIRECT FAX: (302) 576-3551  
jcastellano@ycst.com

JOSEPH M. BARRY  
SEAN M. BEACH  
SANJAY BHATNAGAR  
DONALD J. BOWMAN, JR.  
MICHELE SHERRETTA BUDICAK  
JEFFREY T. CASTELLANO  
KARA HAMMOND COYLE  
KRISTEN SALVATORE DePALMA  
MARGARET M. DiBIANCA  
MARY F. DUGAN  
ERIN EDWARDS  
KENNETH J. ENOS  
IAN S. FREDERICKS  
JAMES J. GALLAGHER  
SEAN T. GREECHER  
STEPHANIE L. HANSEN  
PATRICK A. JACKSON  
DAWN M. JONES  
KAREN E. KELLER  
JENNIFER M. KINKUS  
EDWARD J. KOSMOWSKI  
JOHN C. KUFFEL

SPECIAL COUNSEL  
JOHN D. McLAUGHLIN, JR.  
KAREN L. PASCALE  
PATRICIA A. WIDDOSS

TIMOTHY E. LENGKEEK  
ANDREW A. LUNDGREN  
MATTHEW B. LUNN  
ADRIA B. MARTINELLI  
KATHALEEN MCCORMICK  
MICHAEL W. McDERMOTT  
TAMMY L. MERCER  
MARIBETH L. MINELLA  
EDMON L. MORTON  
D. FON MUTTAMARA-WALKER  
JENNIFER R. NOEL  
ADAM W. POFF  
SETH J. REIDENBERG  
SARA BETH A. REYBURN  
CHERYL A. SANTANIELLO  
(NJ & PA ONLY)  
MONTÉ T. SQUIRE  
MICHAEL P. STAFFORD  
CHAD S.C. STOVER  
JOHN E. TRACEY  
TRAVIS N. TURNER  
MARGARET B. WHITEMAN  
SHARON M. ZIEG

SENIOR COUNSEL  
CURTIS J. CROWTHER

OF COUNSEL  
BRUCE M. STARGATT  
STUART B. YOUNG  
EDWARD B. MAXWELL, 2ND

October 22, 2007

**BY CM/ECF**

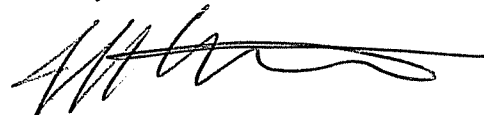
The Honorable Mary Pat Thyng  
United States District Court  
844 North King Street  
Wilmington, DE 19801

Re: Abbot Labs. v. Teva Pharms. USA, Inc., 07-250-\*\*\* -- Scheduling Dates

Dear Judge Thyng:

Please find enclosed a document setting forth each side's proposed scheduling dates for the above-captioned case, prepared in anticipation of this afternoon's teleconference with the Court.

Sincerely,



Jeffrey T. Castellano

JTC:jtc  
Enclosure

cc: U.S. District Court Clerk (By CM/ECF and Hand Delivery)  
Paul E. Crawford (By CM/ECF)

**UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF DELAWARE**

ABBOTT LABORATORIES,  
an Illinois corporation,

Plaintiff,

v.

TEVA PHARMACEUTICALS USA, INC.,  
a Delaware corporation,

Defendant.

Civil Action No. 07-250-\*\*\*

**PROPOSED DATES FOR SCHEDULING ORDER**

In preparation for the October 22, 2007 scheduling conference, counsel for Abbott Laboratories ("Abbott") and counsel for Teva Pharmaceuticals USA, Inc. ("Teva") respectfully submit the following proposal relating to scheduling for this matter.<sup>1</sup>

**A. Nature of the Case**

This is a patent infringement case arising under the Hatch-Waxman Act, 35 U.S.C. § 271(e)(2). Abbott markets a prescription medication known as DEPAKOTE®ER (extended-release), which has been approved by FDA for treatment of epilepsy, bipolar disorder, and prophylaxis of migraine headaches. Abbott owns certain patents, including U.S. Patent No. 6,410,953 ("the '953 patent"), that are listed in the FDA's "Orange Book" in conjunction with DEPAKOTE®ER. The '953 patent covers a formulation for achieving the extended release of a drug product over time, and the patent expires December 18, 2018.

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<sup>1</sup> For convenience and ease of reading, the parties have submitted a single, condensed proposal rather than submitting two full-length versions of this Court's Draft Scheduling Order. However, the parties will provide a complete proposed scheduling order once the Court determines what dates are appropriate for this case going forward.

Teva has filed Abbreviated New Drug Application No. 78-700 (the “ANDA”), seeking FDA approval of a proposed generic version of DEPAKOTE<sup>®</sup>ER. In the ANDA, Teva included a certification (known as a Paragraph IV Certification) stating that its proposed product, if allowed on the market, would not infringe any valid claim of, among other things, the ‘953 patent. Thus, Teva seeks approval to market its product prior to the expiry of the patent.

As required by statute, Teva provided notice to Abbott about the filing of the ANDA and the Paragraph IV Certification. Within 45 days of receiving that notice, Abbott filed this action, alleging that Teva’s proposed generic product would, if allowed on the market, infringe the ‘953 patent. As a result of Abbott’s timely filing, there is currently in place a statutory stay that will prevent FDA approval of the ANDA for a period of 30 months (until September 2009), absent some earlier resolution of this matter on the merits. Teva has answered the complaint, denying infringement, and has asserted a counterclaim seeking a declaratory judgment that its proposed product does not infringe any claim of the ‘953 patent.

**B. Prior Scheduling Order**

After a June 13, 2007 scheduling conference, the Court ordered the following schedule:

| <b>Proposed Date</b> | <b>Event</b>   |
|----------------------|--|
| 6.18.07              | Teva must produce ANDA to Abbott                           |
| 6.25.07              | Initial Rule 26(a)(1) disclosures due                      |
| 10.19.07             | Deadline to amend the pleadings or join additional parties |
| 10.22.07             | Status/scheduling conference with the Court                |

**C. Agreed Matters**

Counsel for the parties previously conferred and agree that 70 hours per side for depositions should be sufficient.<sup>2</sup> If there is a need to expand this time allotment as the case progresses, the parties will work together in good faith to address the issue.

**D. Contested Matters**

The parties were unable to agree on a joint schedule for pretrial and trial activities. The primary areas of dispute are (i) the appropriate length of time for fact and expert discovery; and (ii) whether there should be a separate claim construction process undertaken during the fact discovery period (Teva advocates such a procedure, but Abbott disagrees). The parties' respective proposed schedules are set forth below.

**Abbott's Proposal**

In terms of the ordering of proceedings, Abbott proposes the following schedule:

| <b>Proposed Date</b> | <b>Event</b>  |
|----------------------|---|
| 3.28.08              | Close of Fact Discovery                               |
| 3.31.08              | Parties Exchange Proposed Claims Constructions        |
| 4.07.08              | Tutorial Describing Technology & Matters at Issue Due |
| 4.21.08              | Comment to Opposing Party's Tutorial Due              |
| 4.21.08              | Parties Submit a Joint Claim Construction Chart       |
| 5.05.08              | Opening Briefs on Claim Construction Due              |
| 5.26.08              | Responsive Briefs on Claim Construction Due           |
| 6.24.08              | Hearing on Claim Construction and Summary Judgment    |
| 8.25.08              | Initial Expert Reports Due                            |
| 9.22.08              | Responsive Expert Reports                             |
| 10.27.08             | Close of Expert Discovery                             |

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<sup>2</sup> Time consumed by the party in actual questioning of the witness shall count against that party's time, regardless of which party noticed the deposition.

|          |  |
|----------|--|
| 11.17.08 | Deadline for any <u>Daubert</u> Challenges to Expert Testimony |
| 12.08.09 | Responses to <u>Daubert</u> Challenges                         |
| 1.20.09  | Final Pretrial Order (Including Motions <i>in Limine</i> ) Due |
| 1.26.09  | Final Pretrial Conference                                      |
| 2.17.09  | Trial  |

### **Teva's Proposal**

Teva proposes the following schedule:

| <b>Proposed Date</b> | <b>Event</b>   |
|----------------------|--|
| 11.08.07             | Parties Exchange Proposed Claims Constructions                                       |
| 11.16.07             | Parties Submit Joint Claim Construction Chart  |
| 11.30.07             | Discovery (including depositions) Relating To Claim Construction<br>Must Be Complete |
| 12.04.07             | Individual Briefs on Claim Construction Due  |
| 1.03.08              | Responsive Briefs on Claim Construction Due  |
| 1.16.08              | Tutorial Describing Technology & Matters at Issue Due                                |
| 1.23.08              | Comment to Opposing Party's Tutorial Due   |
|                      | <b>Following Claim Construction Order:</b>   |
| + 30 days            | Close of Fact Discovery  |
| + 60 days            | Expert Reports Due   |
| +90 days             | Responsive Expert Reports  |
| +120 days            | Close of Expert Discovery  |
| +150 days            | Deadline for any <u>Daubert</u> Challenges to Expert Testimony                       |
| +180 days            | Responses to <u>Daubert</u> Challenges   |
| 9.08                 | Final Pretrial Order (Including Motions <i>in Limine</i> ) Due                       |
| 9.08                 | Final Pretrial Conference  |
| 10.08                | Trial  |

Dated: October 22, 2007

Respectfully submitted,

YOUNG, CONAWAY, STARGATT &  
TAYLOR, LLP

OF COUNSEL:

John L. North  
Jeffrey J. Toney  
Jackie L. Toney  
Kristin E. Goran  
David A. Reed  
Sutherland Asbill & Brennan LLP  
999 Peachtree Street  
Atlanta, Georgia 30309-3996  
Phone: 404-853-8000  
Fax: 404-853-8006

By: /s/ Jeffrey T. Castellano  
Jeffrey T. Castellano (No. 4837)  
The Brandywine Building  
1000 West Street, 17<sup>th</sup> Floor  
P.O. Box 391  
Wilmington, DE 19899-0391  
(302) 571-6600  
E-mail: [jcastellano@ycst.com](mailto:jcastellano@ycst.com)

*Attorneys for Teva USA Pharmaceuticals USA,  
Inc.*

Katherine R. Lahnstein  
Sutherland Asbill & Brennan LLP  
1275 Pennsylvania Avenue, NW  
Washington, DC 20004-2415  
Phone: 202-383-0100

OF COUNSEL:

Daniel E. Reidy (*admitted pro hac vice*)  
E-mail: [dereidy@jonesday.com](mailto:dereidy@jonesday.com)  
James R. Daly (*admitted pro hac vice*)  
E-mail: [jrdaly@jonesday.com](mailto:jrdaly@jonesday.com)  
Jason G. Winchester (*admitted pro hac vice*)  
E-mail: [jgwinchester@jonesday.com](mailto:jgwinchester@jonesday.com)  
Jeremy P. Cole (*admitted pro hac vice*)  
E-mail: [jpcole@jonesday.com](mailto:jpcole@jonesday.com)  
Melissa B. Hirst (*admitted pro hac vice*)  
E-mail: [mbhirst@jonesday.com](mailto:mbhirst@jonesday.com)  
JONES DAY  
77 West Wacker Drive, Suite 3500  
Chicago, Illinois 60601-1692  
(T) 312.782.3939  
(F) 312.782.8585

CONNOLLY BOVE LODGE & HUTZ LLP

By: /s/ Paul E. Crawford  
Paul E. Crawford (No. 0493)  
1007 N. Orange St.  
P.O. Box 2207  
Wilmington, DE 19899  
(T) 302.658.9141  
(F) 302.658.5614  
E-mail: [pcrawford@cblh.com](mailto:pcrawford@cblh.com)

*Attorneys for Abbott Laboratories*